



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2012-0566; FRL-9703-8]**

**Limited Approval and Disapproval of Air Quality Implementation  
Plans; Nevada; Clark County; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the Clark County portion of the applicable state implementation plan (SIP) for the State of Nevada. The submitted revisions include new and amended rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current Clark County permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, this limited disapproval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless Nevada submits and we approve SIP revisions that correct

the deficiencies within two years of the final action, and for certain deficiencies the limited disapproval would also trigger sanctions under section 179 of the CAA unless Nevada submits and we approve SIP revisions that correct the deficiencies within 18 months of final action.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit comments, identified by Docket ID Number EPA-R09-OAR-2012-0566, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. *E-mail:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov)
3. *Mail or deliver:* Gerardo Rios (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, by phone: (415) 972-3534 or by email at [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" refer to EPA.

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### **I. The State's Submittals**

A. Which rules did the State submit?

On February 11, 2010, September 1, 2010, and May 22, 2012, the Clark County Department of Air Quality (Clark or DAQ) submitted new and amended regulations to EPA for approval as revisions to the Clark County portion of the Nevada SIP under the Clean Air Act (CAA or Act). Collectively, the submitted regulations (referred to as "Sections") comprise DAQ's current program for preconstruction review and permitting of new or modified stationary sources under DAQ jurisdiction in Clark

County, including related definitions.<sup>1</sup> These SIP revision submittals, referred to herein as the "NSR SIP submittal" or "submitted NSR rules," represent a comprehensive revision to Clark County's preconstruction review and permitting program and are intended to satisfy the requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act. These preconstruction review and permitting programs are often collectively referred to as "New Source Review" (NSR).

It should be noted that pursuant to State law, the State of Nevada, not a local air district, has jurisdiction over plants which generate electricity by using steam produced by the burning of fossil fuel within the State of Nevada. The applicable State law, now codified in Nevada Revised Statutes (NRS) 445B.500, was approved by EPA in 1980 as NRS 445.546(4). See 45 FR 46384 (July 10, 1980) (now codified at 40 CFR 52.1470(e)). Thus, the State, not DAQ, has jurisdiction over such plants that are located or that will be constructed within Clark County. The submitted NSR rules therefore apply to stationary sources located in Clark County, except for plants

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<sup>1</sup> The submitted program relies upon certain definitions contained in submitted Section 0 as well as the definition of "ambient air quality standards" in DAQ Section 11, which EPA previously approved into the Nevada SIP (69 FR 54006, September 7, 2004) and is not included in this submittal.

which generate electricity by using steam produced by the burning of fossil fuel, which are subject to the Nevada Division of Environmental Protection's (NDEP) jurisdiction.

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by DAQ and submitted to EPA by NDEP, which is the governor's designee for Nevada SIP submittals.

Table 1 - Submitted NSR Rules<sup>2</sup>

Section Number	Section Title	Adopted	Submitted
0	Definitions	3/6/12	5/22/12
12.0	Applicability, General Requirements and Transition Procedures	11/3/09	2/11/10
12.1	Permit Requirements for Minor Sources	11/3/09	2/11/10
12.2	Permit Requirements for Major Sources in Attainment Areas (Prevention of Significant Deterioration)	3/6/12	5/22/12
12.3	Permit Requirements for Major Sources in Nonattainment Areas	5/18/10	9/01/10
12.4	Authority to Construct Application and Permit Requirements For Part 70 Sources <sup>3</sup>	5/18/10	9/01/10

<sup>2</sup> DAQ also included a permitting regulation called "Section 12.11 (General Permits For Minor Stationary Sources)" as part of its NSR SIP Submittal but we are not proposing action on this regulation at this time.

<sup>3</sup> Section 12.4 also contains requirements to address the CAA title V requirements for operating permit programs, but we are not evaluating the rule for title V purposes at this time. We will evaluate Section 12.4 for compliance with the requirements of title V of the Act and EPA's implementing regulations in 40 CFR part 70 following receipt of an official part 70 program submittal from Clark County containing this rule.

On August 11, 2010 and March 1, 2011, DAQ's February 11, 2010 and September 1, 2010 submittals were deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. We find that DAQ's May 22, 2012 submittal also meets the appendix V completeness criteria. Each of these submittals includes evidence of public notice and adoption of the regulation. While we can act only on the most recently submitted version of each regulation (which supersedes earlier submitted versions), we have reviewed materials provided with previous submittals. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing Clark County rules governing stationary source permits in the Nevada SIP?

The existing SIP-approved NSR program for new or modified stationary sources in Clark County consists of one State regulation and seven Clark County regulations ("Sections"), or portions thereof, which EPA approved on April 14, 1981, June 18, 1982, June 21, 1981, and September 7, 2004. See 46 FR 21758 (April 14, 1981) (final rule approving DAQ Section 1); 47 FR 26620 (June 21, 1982) (final rule approving revisions to DAQ Section 1); 47 FR 26386 (June 18, 1982) (final rule approving DAQ Section 16); and 69 FR 54006 (September 7, 2004) (final rule approving, in whole or in part, DAQ Sections 0, 11, 12, 58, and

59, and Nevada Administrative Code (NAC) 445B.22083).

Collectively, these regulations established the NSR requirements for both major and minor stationary sources under DAQ jurisdiction in Clark County, including requirements for the generation and use of emission reduction credits in nonattainment areas.

Consistent with Clark's stated intent to have the submitted NSR rules replace the existing SIP NSR program in its entirety, EPA's approval of the regulations identified above in table 1 would have the effect of entirely superseding, or rescinding our prior approval of, all but two of the rules in the current SIP-approved program. Table 2 lists the existing rules in the Nevada SIP governing NSR for stationary sources under DAQ jurisdiction. All of these rules except for Section 11 and NAC section 445B.22083 would be replaced in, or otherwise deleted from, the SIP by the submitted set of rules listed in table 1 if EPA were to take final action as proposed herein. Section 11 is a rule that defines DAQ's "ambient air quality standards." NAC 445B.22083 is a regulation adopted by the Nevada State Environmental Commission (SEC) that prohibits the construction of new power plants or major modifications to existing power plants under State jurisdiction within specified areas



designated nonattainment for certain NAAQS within Clark County.<sup>4</sup>

Our proposed action would have no effect on Section 11 or NAC 445B.22083, both of which remain part of the applicable Nevada SIP.

Table 2 – Existing SIP Rules Governing NSR for Stationary Sources Under DAQ Jurisdiction

Section Number	Section Title	Fed. Reg. Citation and EPA Approval Date
0	Definitions	69 FR 54006, 9/7/04
1	Definitions (33 terms retained in SIP in 69 FR 54006, 9/7/04)	46 FR 21758, 4/14/81 and 47 FR 26620, 6/21/82
11	Ambient Air Quality Standards	69 FR 54006, 9/7/04
12	Preconstruction Review For New Or Modified Stationary Sources	69 FR 54006, 9/7/04
16	Operating Permits	47 FR 26386, 6/18/82
58	Emission Reduction Credits	69 FR 54006, 9/7/04
59	Emission Offsets	69 FR 54006, 9/7/04
NAC 445B.22083	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	69 FR 54006, 9/7/04

C. What is the purpose of this proposed rule?

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<sup>4</sup> As explained further in the TSD, EPA's approval of NAC 445B.22083 in 2004 resolved a regulatory gap that would otherwise exist in connection with NSR for major stationary sources and major modification under NDEP jurisdiction (i.e., major new or modified plants which generate electricity by using steam produced by the burning of fossil fuel, see NRS 445B.500) within the nonattainment portions of Clark County.

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the new and amended NSR rules submitted by DAQ on February 11, 2010, September 1, 2010, and May 22, 2012, as identified in table 1. We provide our reasoning in general terms below but provide more detailed analysis in our technical support document (TSD), which is available in the docket for this proposed rulemaking.

## **II. EPA's Evaluation**

### **A. How is EPA evaluating the rules?**

EPA has reviewed the rules submitted by DAQ governing NSR for stationary sources under DAQ jurisdiction for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164, and the CAA requirements for SIP revisions in CAA section 110(l).<sup>5</sup> As described below, EPA is proposing a limited approval and limited disapproval of the submitted NSR rules.

### **B. Do the rules meet the evaluation criteria?**

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after

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<sup>5</sup> CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

Based on our review of the public process documentation included in the February 11, 2010, September 1, 2010, and May 22, 2012 submittals, we find that DAQ has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each "Section" of DAQ's submitted NSR rules in accordance with the CAA and regulatory requirements that apply to: (1) general preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act, (2) PSD permit programs under part C of title I of the Act, and (3) Nonattainment NSR permit programs under part D of title I of the Act. For the most part, the submitted NSR rules satisfy the applicable requirements for these three permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised NSR permitting requirements promulgated by EPA in the last several years, but the submitted NSR rules

also contain specific deficiencies which prevent full approval. Below, we discuss generally our evaluation of DAQ's submitted NSR rules and the deficiencies that are the basis for our proposed limited disapproval of these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

#### 1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D" of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified "major" stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the NAAQS are achieved. These general pre-construction requirements are commonly referred to as "minor NSR" and are subject to EPA's implementing regulations in 40 CFR 51.160-51.164.

Section 12.1 contains the requirements for review and permitting of individual minor stationary sources under DAQ

jurisdiction in Clark County, and Section 12.4 contains the requirements for review and permitting of modifications at major stationary sources that are not "major modifications" and therefore not subject to PSD or Nonattainment NSR. These regulations satisfy most of the statutory and regulatory requirements for minor NSR programs, but Section 12.1 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, one of the key control requirements in Section 12.1 appears to depend upon a definition of "ambient air quality standards" that is not consistent with the NAAQS. Specifically, subsection 12.1.4.1(c) requires that each minor source permit issued by Clark include emission limitations that ensure that "[t]he ambient air quality standards will be attained or maintained" (12.1.4.1(c)) and appears to depend upon DAQ's definition of "ambient air quality standards" in Section 11, which does not include the 2006 24-hour  $PM_{2.5}$  NAAQS of 35 ug/m<sup>3</sup> or the 2008 Lead (Pb) NAAQS of 15 ug/m<sup>3</sup> (rolling 3-month average). See 40 CFR 50.13 and 50.16. EPA approved Section 11 into the Clark County portion of the Nevada SIP on September 7, 2004 (69 FR 54006), and at the time this definition was consistent with the Federal NAAQS, but given EPA's promulgation of revised NAAQS for  $PM_{2.5}$  and Lead (Pb) in 2006 and 2008, respectively, Section 11 is no longer consistent with the NAAQS.

As such, with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS and the 2008 Lead NAAQS, Section 12.1 does not provide a means for determining whether the construction or modification of a stationary source will result in a violation of applicable portions of the control strategy or interference with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160.

Second, subsection 12.1.3.6(a)(5) provides that an applicant may identify specific portions of a permit that it wants to be Federally enforceable. This is not consistent with CAA requirements, as all conditions of a permit issued pursuant to a SIP-approved permit program are Federally enforceable. See CAA 113, 304; *see also* 40 CFR 52.23. As a general matter, we note that any statement contained in a permit application regarding Federal enforceability has no effect on EPA's or citizens' enforcement authorities under sections 113 and 304 of the Act.

Third, neither Section 12.1 nor Section 12.4 contain a provision addressing, for minor stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Fourth, Section 12.1 provides (in subsection 12.1.2(a)) an exemption from permitting requirements for "[c]onstruction and

operation of any emission units or performance of any of the activities listed in" a separate rule called Section 12.5, which addresses the operating permit requirements of title V of the CAA. Because Section 12.5 is neither approved into the SIP nor included in the NSR SIP submittal, we cannot conclude that this exemption is appropriate for minor NSR purposes.

Fifth, the applicability provisions in Section 12.1 (in particular the definition of "minor source" in subsection 12.1.1(c)) are deficient as they do not address sources of  $PM_{2.5}$  or  $PM_{2.5}$  precursor emissions. Pursuant to CAA section 110(a)(2)(C), States were required to amend their minor source programs to include direct  $PM_{2.5}$  emissions and precursor emissions in the same manner as included for purposes of  $PM_{2.5}$  major NSR. See 73 FR 28321, 28344 (May 16, 2008). In the absence of applicability provisions that appropriately capture minor sources of  $PM_{2.5}$  or their precursors, Section 12.1 does not provide for protection of the  $PM_{2.5}$  NAAQS in the issuance of permits for new or modified minor sources as required by 40 CFR 51.160-51.164.

Finally, Section 12.1 does not contain any provisions designed to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or air dispersion modeling techniques

that do not satisfy the criteria in 40 CFR 51.118(b), as required by 40 CFR 51.164.

Compared to the existing SIP minor NSR program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.1 and Section 12.4 represent an overall strengthening of DAQ's minor NSR program. For example, the new rules establish more detailed monitoring, recordkeeping, and reporting requirements, more specific criteria for permit applications and conditions for permit issuance, and well-defined criteria for the determination of emission limits and standards that represent "reasonably available control technology," which we expect will allow for more effective implementation and enforcement of the requirements applicable to minor stationary sources in Clark County. *See, e.g.,* Section 12.1, subsections 12.1.4.1. and 12.1.5.1, compared with SIP Section 12 (as adopted October 7, 2003), subsections 12.1.1. and 12.8.2.

## 2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration (PSD) of air quality in areas designated "attainment" or "unclassifiable" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166 and 40 CFR 52.21. Clark County is currently



designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants, except for the PM<sub>10</sub> standard in Las Vegas Valley (hydrographic area #212) and for the 1997 8-hour ozone standard in Las Vegas Valley and additional portions of the county. See 40 CFR 81.329.

Section 12.2 and Section 12.4 contain the requirements for review and permitting of PSD sources under DAQ jurisdiction in Clark County. These regulations satisfy most of the statutory and regulatory requirements for PSD permit programs, but Section 12.2 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, the definition of "allowable emissions" in subsection 12.2.2(b) provides for calculation of emissions rates based on "practically enforceable" permit limits, in lieu of federally enforceable limits, but it does not provide criteria by which a limit will be judged to be "practically enforceable" by DAQ. This definition also allows for permit conditions with "future compliance dates" to be used to determine allowable emissions, which is not consistent with EPA's definition of the term in 40 CFR 51.166(b)(16).

Second, the definition of "baseline actual emissions" (BAE) in subsection 12.2.2(c), paragraph (1)(B)(i), includes a requirement to adjust the BAE downward to "exclude any emissions that would have exceeded an emission limitation with which the

major stationary source must comply *as of the particular date*, had such major stationary source been required to comply with such limitations during the consecutive 24-month period"

(emphasis added). EPA's definition of BAE in 40 CFR

51.166(b)(47)(ii)(c) includes a similar provision but requires a downward adjustment in BAE "to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must *currently* comply. . . ." The reference in subsection 12.2.2(c) to an emission limitation that applied "as of the particular date" instead of an emission limitation with which the source must "currently comply" is problematic, as it is not clear which "particular date" the definition refers to.

Third, the definition of "net emissions increase" (NEI) in subsection 12.2.2(ii) contains several provisions in subparagraph (1)(C) for calculating "actual emissions after the contemporaneous project" which are not consistent with EPA's definition of NEI in 40 CFR 51.166(b)(3). EPA's definition of NEI allows for consideration of those emission increases and decreases that are "contemporaneous" with the project under review but does not call for any assessment of actual emissions *after* a contemporaneous project. 40 CFR 51.166(b)(3). Additionally, subparagraph (1)(C)(ii) allows for the calculation of NEI to be based on "projected actual emissions" in certain

cases, which is not allowed under EPA's definition of NEI in 40 CFR 51.166(b)(3).

Fourth, the definition of "major modification" in subsection 12.2.2(dd) is not consistent with EPA's current approach to the treatment of fugitive emissions in applicability determinations for major modifications. Specifically, subsection 12.2.2(dd) requires, in subparagraph (4), that fugitive emissions be excluded from the determination of whether a particular physical or operational change is a major modification "unless the major stationary source is a categorical stationary source or belongs to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act." Although this language is consistent with the text of 40 CFR 51.166(b)(2)(v) as of July 1, 2010, EPA has administratively stayed this paragraph indefinitely, effective March 30, 2011. See 76 FR 17548 (final rule effectuating and extending stay of the final rule entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions" ("Fugitive Emissions Rule") published December 19, 2008). The effect of this administrative stay was to revert the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule, thus requiring that fugitive emissions

be included in "major modification" applicability determinations for all source categories. 76 FR at 17550, 17551.

Fifth, the definition of "regulated NSR pollutant" in subsection 12.2.2(pp) does not satisfy current requirements regarding identification of precursors and treatment of "condensable particular matter" in PSD applicability determinations. EPA's definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49)(i) requires identification of specific precursors for ozone and PM<sub>2.5</sub> purposes. Additionally, EPA's definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49) includes a paragraph (vi) stating that on or after January 1, 2011, "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" (i.e., condensable particular matter) must be accounted for in applicability determinations and in establishing emissions limitations for particulate matter (PM), PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits. See 73 FR 28321 (May 16, 2008) (final rule to implement NSR and PSD requirements for PM<sub>2.5</sub>).

Sixth, one provision governing "Plantwide Applicability Limits" (PALs) in subsection 12.2.19 is not entirely consistent with EPA's requirement regarding the timeframe for adjustment of a PAL to address compliance dates that occur during the PAL effective period. Specifically, where the compliance date for a State or Federal requirement that applies to the PAL source

occurs during the PAL effective period, subsection 12.2.9 allows for a PAL to be adjusted "at the time the affected Part 70 Operating Permit is renewed," rather than "at the time of PAL permit renewal or title V permit renewal, *whichever occurs first,*" as required by 40 CFR 51.166(w)(10)(v) (emphases added). This is a deficiency because, although Part 70 permits are renewed more frequently than PAL permits, at any given time it is possible that the expiration date for a PAL permit will occur before the expiration date for a Part 70 permit.

Finally, neither Section 12.2 nor Section 12.4 contains a provision addressing, for new or modified major stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Compared to the existing SIP PSD program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.2 and Section 12.4 represent an overall strengthening of DAQ's PSD program, in large part because Section 12.2 includes updated PSD provisions to regulate new or modified major stationary sources of greenhouse gases (GHGs) and PM<sub>2.5</sub>, both of which are unregulated under the existing SIP PSD program. Section 12.2 also satisfies the requirements of EPA's 2002 regulations to

revise the NSR programs (67 FR 80186, December 31, 2002) ("NSR Reform" rules), with limited exceptions.

### 3. Nonattainment New Source Review

Part D of title I of the Act contains the general requirements for areas designated "nonattainment" for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such nonattainment areas, commonly referred to as "Nonattainment New Source Review" or "NSR." EPA's regulations for NSR permit programs are found in 40 CFR 51.165. Clark County is currently designated as "attainment" or "unclassifiable/attainment" for all NAAQS pollutants, with two exceptions: certain portions of Clark County are designated and classified as "marginal" nonattainment for the 1997 8-hour ozone NAAQS, and the Las Vegas planning area within Clark County is designated and classified as "serious" nonattainment for the PM<sub>10</sub> NAAQS. 40 CFR 81.329.

Section 12.3 and Section 12.4 contain the NSR requirements for review and permitting of major sources and major modifications under DAQ jurisdiction in Clark County. These regulations satisfy most of the statutory and regulatory requirements for NSR permit programs, but Section 12.3 also contains several deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, the requirements for offsets in Section 12.3, subsection 12.3.6 do not contain adequate provisions to assure that emission offset calculations are based on the same emissions baseline used in the demonstration of reasonable further progress for the relevant NAAQS pollutant (where applicable) and to satisfy EPA's NSR criteria for offset calculations, as required by CAA section 173(a)(1)(A) and 40 CFR 51.165(a)(3).

Second, Section 12.3 does not contain provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in "actual emissions" as required by CAA 173(c)(1) because it does not contain adequate criteria for determining whether certain emission reductions may qualify for use as offsets. Subsection 12.3.6 references a separate rule (Section 12.7) for important criteria related to this determination, but Section 12.7 is neither approved into the SIP nor included in the NSR SIP submittal and therefore cannot provide an appropriate basis for evaluating emission reductions for purposes of satisfying the requirements in CAA section 173(c)(1).

Third, Section 12.3 does not adequately address the requirement in CAA section 173(c)(2) to prevent emissions reductions "otherwise required by [the Act]" from being credited for purposes of satisfying the part D offset requirements.

Specifically, although subsection 12.3.6.6(a) states that "[e]mission reductions used to satisfy offset requirements must be real, *surplus*, permanent, quantifiable, and federally enforceable" (emphasis added), the definition of the term "surplus" in subsection 12.3.2 is not adequate to ensure that emission reductions required by standards promulgated under CAA section 111 (New Source Performance Standards) or under CAA section 112 (National Emission Standards for Hazardous Air Pollutants) are not credited for purposes of satisfying part D offset requirements.

Fourth, the definition of "baseline actual emissions" (BAE) in subsection 12.3.2(c), paragraph (1)(C), includes a requirement to adjust the BAE downward to "exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply *as of the particular date*, had such major stationary source been required to comply with such limitations during the consecutive 24-month period" (emphasis added). EPA's definition of BAE in 40 CFR 51.165(a)(1)(xxxv)(B)(3) includes a similar provision but requires a downward adjustment in BAE "to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must *currently* comply. . . ." The reference in subsection 12.3.2(c) to an emission limitation that applied "as of the particular date" instead of an emission



limitation with which the source must "currently comply" is problematic, as it is not clear which "particular date" the definition refers to.

Fifth, the definition of "major modification" in subsection 12.3.2(x) requires exclusion of two specific types of physical or operational changes that EPA's definition of "major modification" in 40 CFR 51.165(a)(1)(v) does not exclude: (1) the installation or operation of a permanent Clean Coal Technology Demonstration Project that constitutes repowering; and (2) the reactivation of a very clean coal-fired electric utility steam generating unit. Although such exemptions are acceptable for purposes of PSD review (see 40 CFR 51.166(b)(2)(iii) and (b)(36)), such exemptions are not permissible for Nonattainment NSR purposes. See CAA 415.

Additionally, the definition of "major modification" in subsection 12.3.2(x) is not consistent with EPA's current approach to the treatment of fugitive emissions in applicability determinations for major modifications. As discussed above with respect to the definition of this same term in Section 12.2, EPA has administratively stayed 40 CFR 51.165(a)(1)(v)(G), effective March 30, 2011 (see 76 FR 17548), which had the effect of reverting the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule, thus requiring that fugitive emissions

be included in "major modification" applicability determinations for all source categories. 76 FR at 17550, 17551.

Sixth, the definition of "regulated NSR pollutant" in subsection 12.3.2(ii) does not satisfy current requirements regarding "condensable particulate matter" in NSR applicability determinations. EPA's definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(xxxvii) includes a paragraph stating that on or after January 1, 2011, "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures" (i.e., condensable particulate matter) must be accounted for in applicability determinations and in establishing emissions limitations for particulate matter (PM), PM<sub>2.5</sub> and PM<sub>10</sub> in NSR permits. See 73 FR 28321.

Seventh, Section 12.3 allows for interpollutant trades between VOC and NO<sub>x</sub> emission reductions for purposes of satisfying offset requirements for ozone, and interpollutant trades among PM<sub>2.5</sub>, SO<sub>2</sub> and NO<sub>x</sub> emission reductions for purpose of satisfying offset requirements for PM<sub>2.5</sub>. These provisions do not satisfy EPA's regulatory and policy criteria for approval of such interpollutant trades or interprecursor trading hierarchies. See 40 CFR 51.165(a)(11) and "Improving Air Quality with Economic Incentive Programs," U.S. EPA Office of Air and Radiation, January 2001. Although Section 12.3 does not currently apply to PM<sub>2.5</sub> sources because Clark County is

designated attainment/unclassifiable for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, we propose to disapprove this provision because it is contrary to applicable EPA regulations and policy for both ozone and PM<sub>2.5</sub> purposes.

Eighth, Section 12.3 does not contain any provisions designed to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or air dispersion modeling techniques that do not satisfy the criteria in 40 CFR 51.118(b), as required by 40 CFR 51.164.

Finally, neither Section 12.3 nor Section 12.4 contain a provision addressing, for new or modified major stationary sources, the requirement in 40 CFR 51.160(d) to "provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy."

Compared to the existing SIP NSR program in Section 12 (as adopted October 7, 2003), however, submitted Section 12.3 and Section 12.4 represent an overall strengthening of DAQ's NSR program, in large part because Section 12.3 contains definitions of important NSR terms, such as "potential to emit," that are more consistent with EPA's definitions in 40 CFR 51.165(a) than the definitions used in the SIP NSR program (see, e.g., definition of "total potential to emit" in SIP Section 12,

subsection 12.1.6.1). Section 12.3 also satisfies the requirements of EPA's 2002 NSR Reform rules, with limited exceptions.

#### 4. Section 110(1) of the Act

Section 110(1) prohibits EPA from approving a revision of a plan if the revision would "interfere with any applicable requirement concerning attainment and reasonable further progress. . . or any other applicable requirement of [the Act]."

Our approval of the Clark County NSR SIP submittal (and replacement or supersession of the existing SIP NSR rules) would strengthen the applicable SIP in some specific respects and would relax the SIP in other specific respects. Taken in its entirety, we find that the SIP revision represents a strengthening of Clark County's minor NSR, PSD, and Nonattainment NSR programs compared to the existing SIP programs that we approved in 1982 and 2004, and that our approval of the NSR SIP submittal would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act.

The most significant deficiencies that we have identified in the submitted NSR rules, as discussed in detail earlier in this TSD, are generally as follows: (1) the absence of minor NSR provisions that ensure protection of the 2006 PM<sub>2.5</sub> NAAQS and 2008 Lead (Pb) NAAQS; (2) minor NSR applicability provisions

that do not cover stationary sources of PM<sub>2.5</sub>; (3) deficiencies in the definitions of certain terms used in PSD and Nonattainment NSR (NNSR) applicability determinations; (4) definition of "regulated NSR pollutant" that does not adequately address PSD and NNSR requirements for regulation of condensable particulate matter; (5) deficiencies in the criteria for assessing the quality (or "integrity") of emission reduction credits used to satisfy NNSR offset requirements; and (6) the absence of minor NSR or NNSR provisions to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or unacceptable air dispersion modeling techniques. We identify these as the "most significant" deficiencies because these are the most likely to affect pollutant emissions within Clark County, compared to other deficiencies that we do not expect would significantly affect emissions levels (e.g., administrative requirements for permit issuance).

Many of these deficiencies are related to requirements that came into effect after we last approved Clark County's NSR programs in 1982 and 2004. For example, minor NSR SIP revisions to implement the 2006 PM<sub>2.5</sub> NAAQS and 2008 Lead (Pb) NAAQS were due in 2009 and 2011, respectively. See CAA 110(a). Similarly, SIP revisions to implement EPA's PSD and NNSR requirements for condensable particular matter were due in 2011. See 73 FR 28321

(May 16, 2008). With respect to all of these post-2005 requirements, which the existing SIP NSR program does not address, we believe it is reasonable to conclude that our approval of the NSR SIP submittal as a revision to the Nevada SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act, because there is no applicable requirement in the existing SIP program that would be affected by the deficiencies in the submitted NSR rules.

As to the remaining deficiencies, we have evaluated these together with the most significant differences between the two NSR programs (SIP-approved versus the NSR SIP submittal) to evaluate the overall effect that our approval of the NSR SIP submittal might have on the stringency of DAQ's permit programs and the potential air quality impacts of these program revisions. First, certain PSD and NNSR definitions governing applicability determinations in Section 12.2 and Section 12.3 are not as stringent as the corresponding Federal definitions in 40 CFR 51.166 and 51.165, respectively. Second, the offset ratio in Section 12.3 is 1:1, compared to a more stringent ratio of 2:1 in the existing SIP NSR program, and the criteria in Section 12.3 for evaluating the integrity of emissions reduction credits used to satisfy NNSR offset requirements are not adequate to assure actual emission reductions. Third, the minor NSR program

and NNSR program (Sections 12.1, 12.3, and 12.4 to some extent) both lack provisions to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or unacceptable air dispersion modeling techniques. Fourth, DAQ has established public notice thresholds for minor NSR (Section 12.1) that exclude from public review the following types of less-environmentally significant minor sources: (1) new minor sources with potential emissions of NAAQS pollutants below 50 tons per year (tpy) for CO; 40 tpy for VOCs, SO<sub>2</sub>, or NO<sub>x</sub>; 15 tpy for PM<sub>10</sub>; and 0.6 tpy for Lead (Pb) (see subsection 12.1.5.3), and (2) modifications at existing minor sources that result in PTE increases less than 40 tpy for SO<sub>2</sub>; 35 tpy for CO; 20 tpy for VOC or NO<sub>x</sub>; and 7.5 tpy for PM<sub>10</sub> (see subsection 12.1.6(a)(7)). Compare with SIP Section 12, subsection 12.1.1.1 (requiring preconstruction review for "any new stationary source" or "modification" without emissions-based applicability thresholds). Finally, the control standard for minor sources has been changed from "Best Available Control Technology" under the SIP minor NSR program to "Reasonably Available Control Technology" under submitted Section 12.1 (see subsection 12.1.3.6(b), (c)).

With respect to the scope of the NSR program, the deficiencies in the applicability-related definitions in

Sections 12.2 and 12.3 and the new *de minimis* thresholds established in Section 12.1 could potentially reduce the number of new or modified stationary sources that are subject to preconstruction review under these programs and thereby relax the NSR program for new and modified sources compared to the SIP-approved program. As to the minor NSR control standard, the NNSR offset requirements, and the absence of provisions related to stack heights, the submitted NSR rules may result in application of less-stringent control technologies on minor sources (from BACT to RACT), potential under estimations of the air quality impacts of stationary source operations and, with respect to ozone precursor and PM<sub>10</sub> emissions, offset transactions that may not achieve adequate emission reductions.

Several significant improvements in the submitted NSR rules should be considered in assessing the overall impact of these potential program relaxations. First, the potential for reduced numbers of regulated sources is offset to at least some extent by new provisions in Section 12.1 that establish a five-year permit term, thereby mandating a regular review of all minor source permit conditions and source operations, and provisions providing that DAQ may re-open a minor NSR permit at any time for cause. See "Proposed Revision To The Clark County Part Of The Nevada State Implementation Plan: Minor Source New Source Review Program Rule Adoptions And Revisions," January 29, 2009



(hereinafter "Minor NSR SIP Submittal"), Appendix B: "Technical Requirements."

Second, Section 12.1 requires that each minor NSR permit contain a number of important types of permit terms and conditions which are more specific than required under the SIP NSR program and that strengthen the enforceability of the program - for example, physical descriptions of each emission unit, emission limitations that ensure protection of ambient air quality standards, and more clearly defined monitoring, recordkeeping, and reporting requirements modeled on the CAA's title V operating permit program. Compare Section 12.1, subsection 12.1.4.1 (Term and Conditions) with SIP Section 12, subsection 12.8.1.1 (conditions of ATC).

Third, Section 12.1 contains important new conditions for issuance of minor NSR permits, such as the requirement to assure compliance with all applicable SIP requirements. See Section 12.1, subsection 12.1.5.1 (Action on Application) compared to SIP Section 12 (as adopted October 7, 2003), subsection 12.8.2 (ATC issuance requirements).

Fourth, both the minor source program in Section 12.1 and the major source programs in Sections 12.2 and 12.3 rely on several new or revised definitions of key terms that are more consistent with Federal definitions (in CAA 302 and 40 CFR part 51, subpart I) than corresponding definitions in the SIP NSR

program. See, e.g., definition of "potential to emit" in Section 0<sup>6</sup> compared to definition of "total potential to emit" in SIP Section 12 (as adopted October 7, 2003), subsection 12.1.6.1; new definition of "emission limit" or "emission limitation" in Section 0.

Finally, with respect to the difference between BACT and LAER for minor stationary sources in Clark County, supporting information submitted by DAQ indicates that the shift away from the existing BACT standard in the SIP is not likely to affect emissions to any significant degree given the ambiguities in the SIP rule which undermined the practical enforceability of this standard, and that the RACT standard in submitted Section 12.1 is expected to be equally effective in controlling emissions at minor sources, if not more so given the enhanced compliance provisions. See Minor NSR SIP Submittal, Chapter 3: "Technical Support Document for Sections 0, 12.0, 12.1, and 12.11" at 3-20 to 3-28 and Appendix B: "Technical Requirements."

With respect to offset requirements, we note that the SIP NSR program did not require offsets for VOC or NO<sub>x</sub> because Clark County was not designated nonattainment for any ozone NAAQS at

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<sup>6</sup> Section 12.1 establishes emission-based applicability thresholds based on a definition of "potential to emit" in submitted Section 0 that is generally equivalent to EPA's definition of this term in 40 CFR 51.165 and 51.166. The SIP NSR program in Section 12 (as adopted October 7, 2003), contains applicability provisions based on a definition of "total potential to emit" that is generally more expansive but allows, on the other hand, for certain engines categorized as "special mobile equipment" to be inappropriately exempt from the calculation of PTE (see SIP Section 12, subsection 12.1.6.1).

the time when we approved the SIP program in 2004. See Section 59 (Emission Offsets), as adopted October 7, 2003 at Table 59.1.2. The NSR control (LAER) and offset requirements in submitted Section 12.3 therefore ensure greater reductions of ozone precursor emissions compared to the SIP program, which required neither LAER nor offsets for NO<sub>x</sub> or VOC.

For PM<sub>10</sub> purposes, the SIP NSR program required that major stationary sources (i.e., sources with PTE of 70 tpy or more) obtain PM<sub>10</sub> offsets at a ratio of 2:1, whereas the submitted Section 12.3 requires those same sources to obtain PM<sub>10</sub> offsets at a ratio of 1:1. See Section 59 (Emission Offsets) (as adopted October 7, 2003) at Table 59.1.2 and Section 12.3 (Permit Requirements for Major Sources in Nonattainment Areas) (as adopted May 18, 2010) at Table 12.3-1. This relaxation in the offset ratio for PM<sub>10</sub> sources applies only to stationary sources locating within the boundaries of the PM<sub>10</sub> nonattainment area in the Las Vegas planning area (hydrographic area #212), and appears to be counterbalanced by the overall strengthening in the NSR program, as discussed above with respect to both major and minor sources throughout Clark County.

Significantly, the submitted Section 12.2 includes new PSD provisions to regulate new or modified major stationary sources of greenhouse gases (GHGs) and PM<sub>2.5</sub>, both of which are unregulated under the existing SIP PSD program. In addition,

both Section 12.2 and Section 12.3 satisfy the requirements of EPA's 2002 NSR Reform rules, with limited exceptions.

In sum, the new and revised provisions in the submitted NSR rules enable DAQ to review source operations on a more regular basis; require DAQ to make specific determinations related to air quality impacts and applicable SIP requirements as part of permit issuance; improve the enforceability of the NSR program through the establishment of more detailed compliance requirements and improved definitions of important terms; establish NNSR requirements for ozone precursor emissions that were not required under the existing SIP program; and establish new PSD provisions for the regulation of GHG and PM<sub>2.5</sub> emission sources. We find that, on balance, these NSR program improvements outweigh the potential relaxations discussed above compared to the existing SIP program.

In addition, Clark County is currently designated attainment or unclassifiable/attainment for all but two NAAQS pollutants (PM<sub>10</sub> and 1997 8-hour ozone), and with respect to these two remaining pollutants, EPA has determined based on ambient air monitoring data that the nonattainment areas within Clark County are attaining both of these standards. See 75 FR 45485 (August 3, 2010) (Determination of Attainment for PM<sub>10</sub> for the Las Vegas Valley Nonattainment Area) and 76 FR 17343 (March 29, 2011) (Determination of Attainment for the Clark County 1997

8-Hour Ozone Nonattainment Area). We are unaware of any reliance by DAQ on the continuation of any aspect of the permit-related rules in the Clark County portion of the Nevada SIP for the purpose of continued attainment or maintenance of the NAAQS. Given all these considerations and in light of the air quality improvements in Clark County, we propose to conclude that our approval of these updated NSR regulations into the Nevada SIP would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

## 5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy most of the applicable CAA and regulatory requirements for minor NSR, PSD, and Nonattainment NSR permit programs under CAA section 110(a)(2)(C) and parts C and D of title I of the Act but also contain certain deficiencies that prevent us from proposing a full approval of the rules. Therefore, we are proposing a limited approval and limited disapproval of the submitted NSR rules. We do so based also on our finding that, while the rules do not meet all of the applicable requirements, the rules would represent an overall strengthening of the SIP by clarifying and enhancing the NSR permitting requirements for major and minor stationary sources under DAQ jurisdiction in Clark County.

We note that, pursuant to EPA's recent classification of the Clark County ozone nonattainment area as "marginal" nonattainment for the 1997 8-hour ozone standard effective June 13, 2012 (77 FR 28424, May 14, 2012), DAQ is now obligated to submit NSR SIP revisions meeting the applicable requirements of subpart 2 of part D, title I of the Act, including an offset ratio of 1.1 to 1 for NO<sub>x</sub> and VOC (see CAA 182(a)(4)) no later than June 13, 2013. Likewise, with respect to stationary sources under NDEP jurisdiction (*i.e.*, major new or modified plants which generate electricity by using steam produced by the burning of fossil fuel) within portions of Clark County that are designated nonattainment for the 1997 8-hour ozone standard, NDEP is obligated to submit, no later than June 13, 2013, NSR SIP revisions meeting the applicable requirements of subpart 2 of part D, title I of the Act. Although EPA is not requiring NDEP to submit Nonattainment NSR rules for the Las Vegas PM<sub>10</sub> nonattainment area (*i.e.*, hydrographic area 212) in light of the construction prohibition in NAC section 445B.22083<sup>7</sup>, for the 1997 8-hour ozone NAAQS the geographic boundaries of the nonattainment area within Clark County extend beyond the areas

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<sup>7</sup> This rule prohibits the construction of new power plants or major modifications to existing power plants under State jurisdiction within the following areas: (a) Las Vegas Valley, Hydrographic Area 212; (b) El Dorado Valley, Hydrographic Area 167; (c) Ivanpah Valley, Hydrographic Areas 164 a and 164 b; and (d) The city limits of Boulder City. See NAC section 445B.22083. EPA approved NAC section 445B.22083 into the Nevada SIP (69 FR 54006, 54019 (September 7, 2004)), thereby resolving the regulatory gap that would otherwise currently exist in connection with NSR for PM<sub>10</sub> sources under NDEP jurisdiction within the Las Vegas planning area.

subject to the construction prohibition in NAC 445B.22083. See 40 CFR 81.329. NDEP is therefore obligated to address this regulatory gap in Nonattainment NSR permit requirements for new or modified major sources in these areas. In lieu of adopting and submitting a Nonattainment NSR program, NDEP may revise NAC section 445B.22083 to extend its construction prohibitions to the entire ozone nonattainment area within Clark County (as defined in 40 CFR 81.329) and submit this revised rule to EPA for approval into the SIP. These are not current program deficiencies but upcoming obligations on both NDEP's and DAQ's part that we encourage the State to address at its earliest opportunity.

### **III. Public Comment and Proposed Action**

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of revisions to the Clark County portion of the Nevada SIP that govern the issuance of permits for stationary sources under the jurisdiction of the Clark County Department of Air Quality, including review and permitting of major sources and major modifications under parts C and D of title I of the CAA. Specifically, EPA is proposing a limited approval and limited disapproval of the new and amended Clark County regulations listed in table 1, above, as a revision to the Clark County portion of the Nevada SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current Clark County permitting regulations<sup>8</sup> and to set the stage for remedying deficiencies in these regulations.

If finalized as proposed, this limited approval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the State of Nevada corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that relate to the Nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the Clark County nonattainment areas 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in these areas six months after the offset sanction is imposed. Neither sanction will be imposed under the

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<sup>8</sup> Final approval of the rules in table 1 would supersede all but two of the rules in the existing Nevada SIP as listed in table 2. The two SIP rules that will remain in the SIP and are unaffected by today's proposed action are Section 11 and NAC 445B.22083.



CAA if Nevada submits and we approve prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action.

We will accept comments from the public on this proposed limited approval and limited disapproval for the next 30 days.

#### **IV. Statutory and Executive Order Reviews**

##### **A. Executive Order 12866, Regulatory Planning and Review**

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

##### **B. Paperwork Reduction Act**

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq, because this proposed limited approval/disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

##### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule

subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed limited approval/disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting

requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this proposed limited disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

**D. Unfunded Mandates Reform Act**

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector." EPA has determined that the proposed limited disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**E. Executive Order 13132, Federalism**

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed action.

**F. Executive Order 13175, Coordination with Indian Tribal Governments**

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9,

2000), because the SIP EPA is proposing to disapprove would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

**G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks**

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed limited approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

**H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use**

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

**J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 et seq.

Dated: July 13, 2012.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

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